THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION No. 9533 of 2007

Dated: 19.12.2007

Between:

Challa Sambaiah.

..... PETITIONER

And:

The Commissioner of Civil Supplies and others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION No.9533 OF 2007

ORDER:

1. Heard Sri Syam Sunder Rao, the learned counsel representing the writ petitioner and the learned Assistant Government Pleader for Civil Supplies representing the respondents.

2. The writ petition is filed for a writ, order or direction more particularly in the nature of writ of Mandamus, declaring the action of respondents 1 and 2 in issuing proceedings bearing CCS Progs.No.E2/1130/2001, dated 26.03.2007, and Rc.No.D/83/06, dated 25.01.2007 respectively, cancelling licence No.3/87 of the petitioner in respect of Shop No.25004 (Manuguru-I), Manuguru Mandal, Khammam District as illegal, arbitrary, unconstitutional and contrary to the provisions of Clause 28(1) of A.P. Petroleum Products (Licensing and

Regulation of Supplies) Order, 1980 (for short 'the Control Order').

3. Sri S.Syam Sunder Rao, the learned counsel representing the writ petitioner, has taken this Court through the contents of the affidavit filed in support of the writ petition, and also the counter affidavit and would maintain that no reasonable opportunity had been given and the writ petitioner was not permitted to let in the oral evidence and hence, a further opportunity has to be given to the writ petitioner, in the facts and circumstances of the case.

4. Learned Additional Government Pleader for Civil Supplies representing the respondents had taken this Court through the contents of the counter-affidavit and would maintain that there is no procedural irregularity or illegality and in the light of the nature of the orders made, the writ petition being devoid of merits, is liable to be dismissed.

5. It is stated that the petitioner belongs to minority community and lives below the poverty line. After following the procedure, the 3rd respondent granted licence No.3/87 under Clause 4(2) of the Control Orders in respect of Shop No.25004 (Manuguru-I) of Manuguru Mandal, Khammam District, authorizing the petitioner to purchase, sell or store kerosene, for a period of one year and renewed the same from time to time, which is valid up to 31.12.2008. It is also stated that the petitioner has been performing his services without any complaint for more than 19 years.

6. It is further stated that as the petitioner has been suffering from ill-health, during the meeting with the Kerosene Oil Hawkers, his spouse submitted the stock and issue registers to respondent No.3 and no balance of kerosene oil was available with him. On verification of the stock and issue registers, the 3rd respondent allegedly noticed that 2349 liters of kerosene oil was lifted, 2340 liters was distributed and the balance of 9 liters is to be available with the petitioner, but ground balance was shown as Nil. It is also alleged that on 01.08.2006, when the 3rd respondent had visited the petitioner's business point, he was not present and found that the petitioner is alleged to have been doing clandestine business in PDS Kerosene by not showing the true and correct accounts of kerosene oil hawker ship.

7. Further, it is averred that in the month of July 2006, the petitioner lifted 2349 liters of kerosene and distributed the same to the coupon holders and on 27.07.2006, there was checking by the revenue authorities. But, as the petitioner was suffering from ill health, his wife attended the meeting and submitted all the records and informed about his ill health. Thereafter, on 10.08.2006, when the petitioner went to the office of the 3rd respondent, he made allegation that he possessed 200 liters of excess kerosene. Then, the petitioner informed that he maintained all true and correct accounts and coupons, and shown 9 liters as lapse after selling 2,340 liters to card

holders and the allegedly seized 200 liters of kerosene in the cattle shed behind his hawker business point do not belong to him and he is no way concerned with that and that he has no objection to confiscate the same to the Government.

8. It is also stated that the 3rd respondent filed a complaint before the 2nd respondent against the petitioner under Section 6-A of the Essential Commodities Act, 1955 and also initiated departmental action against the petitioner, for contravening Clause 12(1)(ii) of the Control Order and violating Condition No.9 of the Form-BB Licence. The 2nd respondent, in turn, passed the impugned order, dated 25.01.2007, cancelling the licence of the petitioner, without considering the facts and without following the procedure prescribed under law, which is *ex facie* illegal, arbitrary and unconstitutional.

9. It is further stated that the petitioner preferred an appeal before the 1st respondent against the order, dated 25.01.2007, contending that the 2nd respondent did not examine any panchanama witnesses and conduct enquiry, which is mandatory on his part under Clause 28(1) of the Control Order. He also explained the fact that he along with one Mr.Venkatramanaiah made a complaint against one Mr.Ganneboyena Srinu, who is brother of kerosene hawker, Manuguru, Khammam District, to the 3rd respondent but the 3rd respondent did not take any action him, more over, at the behest of the above said person, the

cancellation order had been passed by the 2nd respondent on 25.01.2007.

10. It is further stated that the petitioner has also filed a representation of the consumers of the village stating that he has not committed any mistakes and requesting to continue the petitioner as kerosene hawker of Manuguru Village, for fair distribution of kerosene. But, the 1st respondent simply dismissed the appeal through his order, dated 26.03.2007, confirming the order of the 2nd respondent, by observing that the petitioner cannot raise the ground that the 2nd respondent cancelled the licence, without examining any panchanama witness at the appeal stage and the same is arbitrary, unconstitutional and against the principles of natural justice.

11. It is also averred that the 2nd respondent committed a palpable error by not following the legal position, and without conducting any enquiry, which is permissible under sub-clause (1) of Clause 28 of the Control Order, that too when the petitioner raised an objection that the allegedly seized 200 liters of kerosene do not belong to him and he already submitted coupons and asked for conducting a detailed enquiry by submitting his explanation on 24.11.2006.

12. It is further specified that without conducting enquiry, as required under Clause 28(1) of the Control Order and also as per the Judgment of this Court in **Gummadisetti vs. Joint Collector, Khammam**[1], and

even without examining the panchanama witnesses, the impugned order had been passed by the 2nd respondent and the same is illegal. It is also stated that the impugned order was passed at the instance of certain others.

13. In the counter affidavit filed, it is averred that during the verification of stock and issue register in monthly review meeting held on 01.08.2006, it was found that 9 liters of kerosene oil balance to be available with the kerosene oil hawker and the spouse of the petitioner who attended the meeting has shown as "Nil" balance. Suspecting this, the Mandal Revenue Officer, Manuguru, has conducted the inspection of hawker point immediately after the completion of meeting, where 200 liters of kerosene oil was found in cattle shed, which is behind the hawker shop premises attached to the shop and seized the said kerosene oil under cover of panchanama and filed a case under Section 6-A of the Essential Commodities Act, 1955 before the Joint Collector, Khammam.

14. It is further stated that on verification of coupons and issue register, it is revealed that the petitioner has willfully entered the names of 17 cardholders repeatedly in the issue register and showed it as if they have taken the kerosene oil. In respect of 17 other cardholders also, their names are entered in Issue Register without giving kerosene oil actually to them, but, instead he had collected coupons from them, in order to cover up his *mala fide* intention. The Mandal Revenue Officer, Manuguru has recorded their statements to that effect.

Hence, the contention of the petitioner that he has maintained true and correct books of accounts is not tenable.

15. It is further stated that the Joint Collector, Khammam, after considering the material available on record and by following the due procedure of law as required under Clause 28(1) of the Control Order has canceled the licence, since it was found that the petitioner has contravened Clause 12(1) (ii) of the Control Order and has also violated condition No.9 of the Form-BB Licence. Hence, the contention of the petitioner that the impugned orders are illegal is not tenable.

16. It is further stated that the Joint Collector, Khammam, has not committed any error and has rightly cancelled the licence of the petitioner. In fact, the petitioner has confessed before the Mandal Revenue Officer, Manuguru, that his Clerk has committed a mistake by keeping 200 liters kerosene oil in the cattle shed. Though the petitioner has submitted the coupons in token of having distributed the kerosene, on verification of the issue register, it is revealed that he has shown the names of the cardholders and the coupons without actually distributing the kerosene oil and also shown the names of cards and coupon holders repeatedly to cover up the irregularities.

17. It is further stated that the contention of the petitioner that the licence was cancelled without conducting enquiry is not correct. The authorization of the petitioner was cancelled only after following the due procedure as

required under clause 28(1) of the Control Order. The orders are passed, giving clear observation as to the reasons arrived thereto.

18. Learned counsel for the writ petitioner placed strong reliance on **Gummadisetti**'s case (1 supra), wherein a Division Bench of this Court observed as under:

> "It is needless to observe that the enquiry initiated against the appellant under sub-Clause (1) of Clause 28 of the Control Order shall go on strictly in accordance with law, uninfluenced by any of the observations made in that order as well as the observations made by the learned single judge. The licensing authority is required to provide an adequate opportunity to the appellant herein and if necessary, permit him to lead evidence in support of his case, both documentary as well as oral. The objections preferred and the evidence made available by the appellant shall be taken into consideration before an appropriate decision is taken by the licensing authority under sub-clause (1) of Clause 28 of the Control Order."

19. The order made by the Joint Collector, Khammam-2nd respondent herein reads as under:

> "The Mandal Revenue Officer, Manuguru vide ref. 1st read above has filed a case against Sri Challa Sambaiah, Kerosene Hawker, Manuguru-I (Shop No.25004) u/s 6-A of the E.C.Act.1955 in the court of Joint collector, Khammam for improper maintenance of accounts and having excess stock of 191 liters of PDS kerosene with him. The case has been taken on file and initiated action u/s. 6-A of the E.C.Act, 1955. It has also been decided to initiate departmental action against the

said kerosene hawker for contravening the clause 12(1) (II) of A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980 and violation of the condition 9 of the B-B Form licence issued under clause 4(2) of the said control order.

The report of the Mandal Revenue Officer, Manuguru reveals that during his inspection of the shop premises on 31.07.06, he found 191 liters of PDS kerosene in excess on ground when compared to the stock and issue register as shown below.

i) Total quantity of kerosene oil lifted by the hawker ::2349 Liters

ii) Sales as per issue register :: 2340 Liters

iii) Balance to be available with hawker :: 09 Liters.

iv) Balance shown in the stock register :: Nil

v) Physically available in the kerosene hawker point :: 200 Liters

(i.e., excess 191 liters)

There upon a notice as required under the provision of clause 28(1) of A.P.P.P.(L&RS) 1980 has been issued to Sri Challa Sambaiah, Kerosene Hawker to show cause as to why his BB-Form licence should not be cancelled vide ref. 2nd read above which has been served on 27.09.06.

On 06.10.06, Sri K.Ramesh , Advocate present and filed vakalat and case posted on 13.10.06 fro further hearing. The case has been adjourned from time to time as the counsel requested time. On 24.11.06, the Hawker also present and filed written explanation in Telugu version. Since the counsel for the respondent has prayed time for arguments and as such the case was posted on 08.12.2006.

The explanation of the respondent reveals that he

has been working as kerosene hawker since 1897 without any remarks either from the public or from the officials. During the month July, 2006, he has lifted 2349 liters of kerosene oil and distributed to the coupon holders up to 29.07.200,6 on which date, the Mandal Revenue Officer has inspected his shop. Due to ill health, the kerosene oil was distributed through his boy. On 02.08.2006, his wife has attended the meeting in Mandal Revenue Officer's Office and handed over the stock issue registers in the office. The Mandal Revenue Officer has informed him on 10.08.2006, that there is excess stock of 200 liters of kerosene oil in his premises. He replied the Mandal Revenue Officer that the said kerosene does not belong to him and that he has distributed to all the 390 coupon holders @ 6 liters i.e., 2340 liters. He has therefore requested to drop the proceedings against him

The counsel for the respondent was present on 08.12.2006 and 05.01.2007, but he has not filed explanation despite adequate opportunity and even after giving final chance. Therefore, it is decided to dispose the case on the basis of merits and reserved for orders. However, the counsel has been given a chance to file his further explanation, if any, on or before 12.01.2007.

Accordingly, on 12.01.2007, the counsel for the respondent filed written explanation stating that, he never violated any provision as alleged; that he had maintained true and correct account; but due to political disputes in the village and pressures made by his opponents, the complainant made a false case. He has also stated that, in the month of July, 2006, he lifted 2349 liters and distributed to the coupon holders and checked his shop by the Revenue authorities on 29.07.2006. He informed the Mandal Revenue Officer on

10.08.2006, that the allegedly seized 200 liters of kerosene do not belong to him and he already submitted coupons through his wife. He has also stated that, there is no objection to confiscate the seized kerosene, as the same do not belong to him and requested to drop the proceedings against him, since he has been maintaining the accounts properly.

The case has been examined. The report of the Mandal Revenue Officer, Manuguru and panchanama conducted on 01.08.2006 reveals that 200 liters of PDS Kerosene oil was available in the premises of the shop of kerosene hawker. As per the stock and issue register, there should be a balance of 9 liters of kerosene, but he has shown as nil and there was a stock of 200 liters of kerosene oil in the premises of the said shop. As seen from the above, it is clear that he has manipulated the records with fictitious entries showing that the entire stock is distributed, though there was a stock of 200 liters with him. The argument that it does not belong to him is nothing but trying to escape from the case. It is clear case of violation of condition 9 of the BB Form licence and contravening the clause 12 (1) (ii) of APPP (L&RS) Order, 1980.

Taking into consideration of the above facts, the licence bearing No.3/87 issued under APPP (L&RS) Order, 1980 to Sri Challa Sambaiah, Kerosene Oil Hawker, Shop No.25004 (Manuguru –I) of Manuguru (M) is hereby cancelled under clause 28 (1) of APPP (L&RS) Order, 1980.

An appeal against this order shall lie before the Director of Civil Supplies, A.P., Hyderabad, within 30 days from the date of receipt of this order."

20. The order, dated 26.03.2007, made by the

Commissioner of Civil Supplies, A.P., Hyderabad-1st respondent herein, reads as under: -

> "This is an appeal filed by Sri Challa Sambaiah, Kerosene oil hawker, Manuguru Village, Khammam District, under clause 31 of the A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980, challenging the orders of the Joint Collector, Khammam District in proceedings No.Rc.D/83/2006 dated 25.01.2007, cancelling Form-BB licence.
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> Brief details of the case are that the Mandal Revenue Officer, Manuguru has reported to the Joint Collector, Khammam that he was inspected the business premises of Sri Challa Sambaiah, Kerosene hawker, Manuguru on 31.07.2006, and found that the hawker has not opened the shop till the evening, but on 01.08.2006, the spouse of the hawker has submitted stock register and issue register stating that the hawker is suffering from ill-health and no balances are available with them.
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> To conduct physical verification of stocks, the MRO inspected the business premises of Sri Challa Sambaiah, Kerosene Hawker, Manuguru, again on 01.08.2006 and found 200 liters of PDS kerosene in a cattle shed behind the hawker point.
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> Basing on the report of the Mandal Revenue Officer, Manuguru, the Joint Collector, Khammam has issued a show cause notice, dated 18.09.2006, to the kerosene hawker to show cause as to why his Form-BB licence should not be cancelled.
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> The hawker has submitted explanation to the Joint Collector, on 24.11.2006. Since the counsel for the respondent has prayed time for arguments, the Joint Collector, has adjourned the case. On 12.01.2007, the counsel for the respondent filed written arguments before the Joint collector,

Khammam. The Joint Collector, Khammam cancelled Form-BB licence of the hawker under clause 28(1) of the A.P. Petroleum Products (L&RS) Order, 1980, in proceedings No.Rc.D/83/2006, dated 25.01.2007.

Challenging the orders of the Joint Collector, Khammam, dated 25.01.2007, Sri Challa Sambaiah, Kerosene Hawker, Manuguru filed the present appeal adducing the following grounds:

The lower court erred in cancelling the licence of the appellant herein under clause 28(1) of APPP (L&RS) Order, 1980, and disallowing the objections of the appellant, is manifest injustice, not exercising the jurisdiction vested in it and prima-facie error committed by the Hon'ble Joint Collector, Khammam, Khammam District.

The lower court erred in saying that, this appellant is trying to escape from the case, without considering the facts and documents submitted by the appellant is against principles of natural justice.

The lower court without examining any witness and the public opinion including the panchanama witnesses, cancelled the licence bearing No.3/87 issued under APPP (L&RS) Order, 1980, which is illegal and arbitrary and against principles of natural justice.

The lower court failed to appreciate the fact, that on 10.08.2006,during the meeting with the kerosene hawkers, his spouse has submitted the stock and issue registers to the respondent no.2, as he has been suffering from ill health and no balance of kerosene oil was available with him and on verification, the complainant/respondent No.2 allegedly noticed that kerosene oil lifted is 2349 liters, distributed 2,340 liters and balance to be available 9 liters, but ground balance shown as Nil, the complainant further alleged that on

01.08.2006, surprised my business point and there I was not present and my spouse was escaped and he found that I alleged to have been doing clandestine business in PDS kerosene by not showing the true and correct accounts.

The Hon'ble Joint Collector/respondent No.1 committed a palpable error by not following the legal position that without conducting any enquiry evidence in support of his case i.e., the second respondent, which is permissible under sub-clause (1) of Clause 28 of the APPP (L&RS) Order, 1980. Moreover in this instant case when the objection rose by this appellant that the alleged seized 200 liters of kerosene does not belong to him and he already submitted coupons through his wife. The appellant also stated that, there is no objection to confiscate the seized kerosene, as the same does not belong to him and asked for conducting detailed enquiry regarding this incident. The appellant along with his explanation dated 24.11.2006 and argument advanced by the learned advocate before the 1st respondent, and the 1st respondent ought to have allowed the objections or lest should have been examined.

It is settled law that, without conducting any oral enquiry or documents, is against principles of natural justice, as the appellant is very much interested to submit his evidence of documentary and oral evidence before the 1st respondent, but the 1st respondent not conducted any examination, which is against the principles of natural justice. Hence, this Appellant begs to stand before your Lordship.

The order of the 1st respondent, vide Rc.No.D/83/06, dated 25.01.2007, cancelling the licence bearing No.3/87 issued under APPP

(L&RS) Order, 1980, to the appellant, Kerosene Oil Hawker, shop No.25004 (Manuguru-I) of Manuguru (M), Khammam district, if allowed to stand would result in miscarriage of justice and therefore, the order of the lower court is liable to be set aside.

The appeal case heard on 09.03.2007. The learned counsel for the petitioner attended and reiterated the grounds in the appeal petition and also filed written arguments. While producing a copy of judgment of Hon'ble High Court, Hyderabad, in W.P.No.2199/2003 the counsel has argued that the licencing authority has to provide adequate opportunity to the appellant and if necessary permit him to lead evidence in support of case, both documentary as well as oral, but in this case the Joint Collector, Khammam without conducting enquiry properly, examining the witness and also panchanama witness, passed orders cancelling the licence of the appellant. He has also argued that the impugned order has been passed only at the behest of one Mr.Ganneboyena Srinu, brother of the FP Shop dealer, Manuguru, since the appellant along with one Venkataramanaiah made a complaint against Srinu on 22.08.2006 saying that he is committing mischievous things with regard to distribution of cards.

The counsel for the appellant has requested to set aside the order of the Joint Collector, Khammam in Progs. Dated 25.01.2007 in Rc.No.D/83/2006 cancelling the licence and consequently, to direct to continue the supply of kerosene to the licensee.

I have gone through the material placed before me and the arguments of the counsel for the appellant. As seen from the records of the lower Court, the MRO, Manuguru and panchanama witnesses have found 200 liters of kerosene with

iron drum kept in cattle shed behind the hawker point though he was shown nil balance in the stock register. The explanation of the hawker is that the alleged seized 200 liters of kerosene does not belong to him and he has no objection to confiscate the seized kerosene.

According to Section 14 of the E.C. Act, 1955, the burden of proof lies with the dealer for contravention any Order made under Section 3 of the E.C.Act, 1955. therefore, the hawker cannot escape from the contravention as the kerosene was seized behind the hawker point.

The argument of the counsel for the appellant is that the impugned order has been passed only at the behest of one Mr.Ganneboyena Srinu, brother of the FP Shop dealer, Manuguru, as the appellant along with one Venkataramanaiah made a complaint against Srinu on 22.08.2006 saying that he is committing mischievous things with regard to distribution of cards and the Joint Collector, Khammam without conducting enquiry properly, examining the witness and also panchanama witness, passed orders cancelling the licence of the appellant.

As seen from the record of the Joint Collector, Khammam, the licensee has not raised the said contention before the Joint Collector, Khammam.

Further, the counsel has not produced a copy of complaint said to be made by the appellant and one Mr.Venkatramanaiah, before the appellate authority.

Further, the Joint Collector, Khammam has adjourned the case even after submission of explanation on 24.11.2006 at the request of the hawker/advocate for the hawker to 08.12.2006; 05.01.2007 and 12.01.2007. On 12.01.2007, after receipt of another explanation by the licensee and examining the case the Joint Collector, passed

> the orders cancelling the licence, as such the contention of the counsel that the orders have been passed without conducting enquiry properly is far from truth as the Joint Collector, Khammam has given adequate opportunity to the hawker to represent his case.
>
> As the distribution of essential commodities under PDS is intended for vulnerable sections of the society and the kerosene oil is ought to be distributed to the cardholders, any diversion of kerosene oil is not only clear violation of the Government instructions but also defeat the main objective of the A.P. Petroleum Products (Licensing & Regulation of Supplies) Order, 1980.
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> In view of the above, I do not see any merit to interfere with the orders of the Joint Collector, Khammam, dated 25.01.2007 in Rc.No.D/83/2006 cancelling Form-BB licence of the appellant herein. Accordingly, the appeal is dismissed."

21. Hence, in the light of the facts and circumstances of the case, it cannot be said that the writ petitioner was not given a reasonable opportunity. It may be true that when a request made for examination of the witnesses, has been refused, it may be raised as a ground stating that no reasonable opportunity had been given. As can be seen from the reasons, which had been recorded, this appears to be not the case of the writ petitioner. That being so, in the light of the findings recorded by the primary authority and also the appellate authority, this Court is satisfied that the writ petition is devoid of merits.

22. Accordingly, the writ petition is dismissed. No order as to costs.

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(P.S.NARAYANA, J)

Dated: 19.12.2007
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THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION No. 9533 of 2007

Dated: 19.12.2007

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[1] 2004(1) ALT 565